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**SUBMITTED ELECTRONICALLY VIA EFS-WEB**

**AFTER FINAL SUBMISSION - PLEASE FORWARD TO EXAMINER IMMEDIATELY**

**In RE:**

<b>Application No.:</b>	10/707,489
<b>Filing Date:</b>	December 17, 2003
<b>Inventor:</b>	David M. Kuchar
<b>Title of Invention:</b>	Pennant Tape
<b>Confirmation No.:</b>	1488
<b>Group Art Unit:</b>	1772
<b>Examiner:</b>	William P. Watkins, III
<b>Date Last Office Action:</b>	May 2, 2006

**REQUEST FOR RECONSIDERATION**

Dear Sir:

Your Office Action of May 2, 2006 is hereby acknowledged. Prior to that Office Action, claims 1-17 were pending, and are currently pending in the Present Application. In your Office Action, claims 1-5, 7, and 12-15 were finally rejected by the Examiner, and claims 6, 8-11, and 16-17 were objected to by him. Claim 1 is the only independent claim, and all other claims depend directly or indirectly from claim 1. The Examiner stated the reason for the claim objections is that they are dependent upon rejected base claim 1, but that they contain otherwise allowable material if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The objectionable claims recite structures that cover all of the embodiments described in the drawings. The Applicant wishes to thank the Examiner for offering to allow these claims. However, the Applicant believes that his invention, as described in the specification and drawings, is entitled to broader protection.

In your Final Office Action of May 2, 2006 as well as in your Non-Final Office Action of October 7, 2005, the Examiner rejected claims 1-5, 7, and 12-15 under 35 U.S.C. §§ 102(b) and 103(a) based upon, *inter alia*, patents issued to Scholl (US 2,633,440 -- hereinafter Scholl) and Udoh (US 5,967,788 -- hereinafter Udoh). On February 16, 2006, the Applicant filed a reply to your Non-Final Office Action which traversed the Examiner's rejections, and responded to all grounds of rejection and objection by the Examiner. The Applicant hereby incorporates his traversal arguments of February 16, 2006 in their entirety into this request for reconsideration. In preparing your Final Office Action, the Examiner considered the Applicant's traversal arguments, and he found them not to be persuasive.

Apparently, the problem arises over a disagreement between the Applicant and the Examiner regarding the meaning of the word "pennant." The Applicant intended the word "pennant" to generally follow the standard definition derived from dictionaries and common usage. The following is a quotation from the Applicant's reply of February 16, 2006:

"The dictionary defines the word pennant as follows:

**pen•ant**<sup>1</sup>  
*n*

1. Nautical. A long tapering, usually triangular flag, used on ships for signaling or identification.
2. A flag or an emblem similar in shape to a ship's pennant.
3. Sports. A flag that symbolizes the championship of a league, especially a professional baseball league. The championship symbolized by such a flag.

A second definition is:

Main Entry: **pen•nant**<sup>2</sup>  
Pronunciation: 'pe-n&nt  
Function: *noun*  
Etymology: alteration of *pendant*

**1 a** : any of various nautical flags tapering usually to a point or swallowtail and used for identification or signaling **b** : a flag or banner longer in the fly than in the hoist; *especially* : one that tapers to a point

**2** : a flag emblematic of championship (as in a professional baseball league); *also* : the championship itself

All of the dictionary definitions define a pennant as a flag. In fact, the Merriam Webster definition 1b defines it as: "*a flag or banner longer in the fly than in the hoist*," and further states: "***especially** one that tapers to a point*."<sup>3</sup> The last statement indicates that the usual shape of a pennant is triangular, but that other shapes are permissible."

#### **SUBSTANCE OF INTERVIEW WITH EXAMINER**

During a telephone interview with the Examiner on May 8, 2006, the Examiner stated that he could not accept such a narrow definition. The prior art of Scholl and Udoh were discussed. The Agent of Record pointed out that Udoh does not anticipate the claims of the Present

<sup>1</sup><http://www.dictionary.com> (retrieved 02/06/2006)

<sup>2</sup>Merriam Webster Online - <http://www.merriamwebster.com>

<sup>3</sup>Emphasis supplied

Application, and also teaches away from the Applicant's invention. Regarding Scholl, the Agent asserted that the zig-zag pattern shown in the figures of Scholl are not pennants either according to the standard definitions or as the Applicant intended in the claims of his invention. Merely comparing the drawings and specifications of Scholl and the Applicant shows that the inventions are different. The Applicant restates and preserves his argument that Scholl neither shows nor describes pennants. However, in order to provide a clearer understanding of the meaning of claim 1, the Applicant proposed to submit an amendment to claim 1 that adds the intended interpretation of the meaning of "pennants" and "connecting bands" to the claim therein. The Examiner and the Agent discussed specific wording for claim 1 during the interview. The Agent discussed with the Examiner that in preparing this Request for Reconsideration, only claim 1 would be discussed. Both agreed that if independent claim 1 becomes allowable, then all claims depending from claim 1 would also become allowable.

#### **ARGUMENTS TRAVERSING REJECTION OF CLAIM 1 ON THE BASIS OF UDOH**

One of the key elements of claim 1 of the Present Application is "a tape of flexible material having two generally parallel edges and substantially greater length than width ..." Udoh invented a "toy device for illustrating mathematics." From an examination of the figures of Udoh, it is apparent that his invention does not meet this criterion. In his specification, he states:

*...It is important that the present toy device be cuttable and flexible so that the present device can be cut into connected segments and unfolded to be placed around a subject's head. ...<sup>4</sup>*

Here, Udoh teaches away from a "tape of flexible material having ... substantially greater length than width. In any event, this key element of claim 1 is not apparent from any of the teachings of Udoh. Therefore, the Applicant respectfully requests that the Examiner reverse his rejection of claim 1 as being anticipated by Udoh under 35 U.S.C. § 102(b).

#### **AMENDMENT TO CLAIM 1 AND REJECTION THEREOF ON THE BASIS OF SCHOLL**

As previously mentioned, applicant submits an amendment to claim 1 herewith that adds the intended meaning of "pennants" and "connecting bands" to the claim therein. The key element of the amendment is the end phrase:

*... such that when deployed, the dimension of the pennants transverse to the longitudinal axis of the tape is substantially greater than the dimension of the bands transverse to the longitudinal axis of the tape.*

This phrase eliminates from consideration any zig-zag pattern (e.g., Scholl FIG. 3) with "pennants" (according to the Examiner's interpretation) and "connecting bands" of the same or similar size. Scholl speaks of "a plurality of larger transversely disposed strands or threads **6**, and a plurality of smaller longitudinal threads or strands **7**." <sup>5</sup> This points to the longitudinal dimension of the extensions being smaller than their transverse dimension. However, the transverse dimension of his extensions is not substantially greater than the transverse dimension

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<sup>4</sup>Udoh 1:64-67

of the connecting elements (or “bands” according to the Examiner’s interpretation). Examination of the “pennants” and “connecting bands” in the drawings of the Present Application shows that the transverse dimension of the pennants is substantially greater than the transverse dimension of the bands. The pennants are long in the transverse dimension while the bands are very narrow in the transverse direction. Therefore, the amendment to claim 1 introduces no new matter.

Based upon the amendment to claim 1 submitted herewith, and the arguments submitted above, the Applicant respectfully requests that the Examiner reverse his rejection of claim 1 as being anticipated by Scholl under 35 U.S.C. § 102(b). The Applicant further respectfully requests that the Examiner allow claim 1 and all claims depending directly or indirectly from claim 1, and that he issue a Notice of Allowance for the Present Application.

**THE TIMELINESS OF THIS REQUEST FOR RECONSIDERATION**

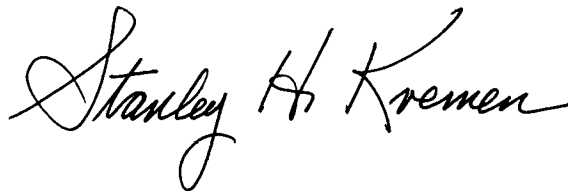
**REQUEST FOR INTERVIEW**

The Applicant wishes to call attention that this reply to your Final Office Action is being filed within two months of the mailing date of your Final Action. If after reviewing this reply, the Examiner still remains unconvinced, the Applicant requests an interview with the Examiner prior to your next Office Action. The purpose for such an interview would be to develop claim language for claim 1 to place it into condition for allowance.

The Applicant acknowledges the assistance provided to him by the Examiner, and wishes to thank the Examiner for such kind assistance.

Thank you for your prompt consideration of this reply.

Respectfully submitted,

A handwritten signature in black ink that reads "Stanley H. Kremen". The signature is written in a cursive, flowing style with a large initial 'S'.

Stanley H. Kremen,  
Registered Patent Agent  
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<sup>5</sup>Scholl 3:62-64